

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,390

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Appeal of)

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INTRODUCTION

The petitioner appeals the decisions by the Department of Social Welfare denying her request to restore food stamp benefits denied to her because of a six-month disqualification period imposed by the Department and reducing the food stamps of the remaining members of her household due to the recoupment of an overpayment. The issues are whether the petitioner's appeal is timely, whether the board has jurisdiction to consider any issues arising from an intentional program violation, whether the Department's recoupment of an overpayment is erroneous, and whether the Department's imposition of a six-month disqualification against the petitioner violated federal statutes regarding the timing of such penalties.

FINDINGS OF FACT

In lieu of an oral hearing the parties submitted written arguments and documents establishing the uncontroverted facts of the matter. The following is taken from the petitioner's Memorandum:

1. Petitioner, [B.P.], was convicted of welfare fraud and sentenced to 18 months by the Franklin District Court on July 14, 1987. The execution of her sentence was suspended and she was placed on probation. Restitution in the amount of \$7,740 was ordered.
2. On 3/25/88, Petitioner requested that the Court modify the conditions of her probation to eliminate the restitution order based on her inability to pay.
3. Vermont District Court Judge Wolchik granted this request on May 5, 1988 and discharged the petitioner from probation. Judge Wolchik's Criminal Docket entry states that probation was discharged "satisfactorily".
4. The Department terminated ANFC and Food Stamp benefits to the petitioner's household at or about the time her case was referred to the State Attorney for criminal prosecution in 1986. The petitioner

neither sought nor received any Food Stamps from the Department despite her limited financial situation until October, 1992.

5. On October 12, 1992, the Department disqualified the Petitioner for 6 months for participation in the Food Stamp household and awarded a monthly Food Stamp allotment of \$229 to the 5 person household. Inclusion of the Petitioner in the Food Stamp household would have resulted in a 6 person household and an increased monthly allotment of \$317. Thus, the Department's 6 months disqualification of the Petitioner resulted in the household receiving \$88 less in Food Stamps each month or \$528 for the 6 month period of ineligibility. The Petitioner's household was also subject to a 20% reduction from the monthly Food stamp allotment of \$229 (or \$45) to recover an overpayment of an unstated basis or amount. This overpayment recoupment further reduced the household's monthly Food Stamp allotment to \$184.

6. On August 20, 1993, the petitioner requested that the Department suspend recoupment of the overpayment from the household's monthly Food Stamp grant, remove her 6 month disqualification from the Food Stamp household and restore lost Food Stamp benefits to the household in the amount of recoupment benefits from October 12, 1992 and Food Stamp benefits lost to the household as a result of her 6 month disqualification.

7. When the Department failed to act on the petitioner's request for restoration of the underissuance in her food stamps, a fair hearing was requested.

8. On November 3, 1993, the Attorney General's Office responded by indicating that the Department would not comply with the petitioner's restoration request.

Based on the Court documents submitted by the petitioner there appears to be no dispute that the petitioner was found by the Court to have "wrongfully obtained" \$4,091.00 in food stamps--the amount originally specified by the Court for restitution and the amount later assessed to the petitioner by the Department as an overpayment. (The remainder of the petitioner's restitution--which, when added to the food stamp overpayment, totalled \$7,740.00--was for ANFC benefits overpaid to the petitioner.)

ORDER

The Department's decision assessing a food stamp overpayment against the petitioner's household of \$4,091.00, subject to recoupment through 20 percent of the household's ongoing monthly benefits, is affirmed. The Department shall restore to the petitioner the amount of food stamps (\$528.00--subject also to a 20% recoupment) denied to the household during the petitioner's six-month disqualification period, the timing of which is held to have been contrary to the applicable federal statute.

REASONS

The first issue the board must address is the timeliness of the petitioner's appeal. The petitioner filed her appeal in this matter on October 21, 1993, one year after the Department had taken its initial action on her application. However, in August, 1993, the petitioner had requested the Department to "restore"

benefits that the petitioner alleged had been erroneously denied her since October, 1992--less than one year previously. When the Department did not respond to this request after two months, the petitioner, in October, 1993, requested this fair hearing. The Department subsequently (in November, 1993)

denied the petitioner's request to have her benefits restored.⁽¹⁾

Food Stamp Manual (F.S.M.) § 273.17(a)(1) provides that the Department "shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency", and that such restoration shall be allowed up to 12 months prior to the date the recipient requests that lost benefits be restored. The regulations further provide that when, as here, the Department disagrees that the benefits in question should be restored, the recipient has 90 days from the date of the Department's determination to request a fair hearing. F.S.M. § 273.17(c)(2).

In this case, all the benefits the petitioner seeks to have restored are alleged to have been lost due to Department error and were for months less than one year from the date she requested the Department to restore them. She then requested a fair hearing before the Department formally denied her request for restoration of these benefits. Therefore, based on the above regulations, it must be concluded that the petitioner's appeal in this matter is timely.

The next question is whether the board has jurisdiction to consider the subject matter of the petitioner's appeal. The Department maintains that because the petitioner's claims are based on actions the Department took in her case following her conviction for an intentional program violation, the board lacks jurisdiction in the matter. However, the federal statute and regulations providing that "no further administrative appeal procedure exists" refer only to those situations in which an administrative "disqualification hearing" has been held (see F.S.M. § 273.16[e][8][ii]) or where the recipient has signed a "waiver" of his or her right to a hearing (see F.S.M. § 273.16[f][2][ii] and Bourn v. D.S.W., 156 Vt. 219 [1991].) In cases such as this, in which a court has determined that the recipient committed an intentional program violation, there is no provision in the regulations prohibiting further administrative appeal of a collateral issue. See F.S.M. § 273.16(g).

The petitioner in this matter does not contest the finding that she committed an intentional program

violation--a matter admittedly beyond the board's jurisdiction. Her dispute is with the Department's subsequent and separate decisions to institute recoupment against her long after the Court had "discharged" her from her obligation to make "restitution" and to impose a six-month disqualification penalty against her more than five years after the date of her conviction. Neither of these issues could have been foreseen and raised at the time the petitioner went to court; and consideration of neither of these issues by the board at this time will in any way implicate or challenge the validity and finality of the petitioner's criminal conviction.⁽²⁾ Therefore, it must be concluded that both issues involve a "claim for assistance" that the Department has "denied" that falls within the board's jurisdiction under 3 V.S.A. § 3091(a).

Turning now to the "merits" of the petitioner's claim, first to be considered is the petitioner's assertion that the Court's "discharge" of her from having to pay "restitution" of \$4,091.00 compromises or terminates the Department's authority to recoup this amount through the reduction of her household's ongoing benefits. In this instance, however, it is the petitioner who has failed to appreciate the legal distinction between the Department's initial "decision" to refer the case for criminal prosecution for a

determination of whether the petitioner had committed an intentional program violation and the subsequent and separate action by the Department to initiate recoupment against her.

The statute and regulation cited by the petitioner (7 U.S.C. § 2015[b][2] and 7 C.F.R. § 273.16[a][1]) specify only that the Department cannot pursue an adjudication of intentional program violation in more than one forum. These provisions do not bar an administrative action by the Department to establish "recoupment" against the petitioner after--and separate and distinct from--the criminal proceedings that were held to determine her "guilt" and the criminal penalty therefore.

33 V.S.A. § 141(a) provides as follows:

A person who knowingly fails, by false statement,

misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to the qualifications of that person to receive aid or benefits under a state or federally-funded assistance program, or who knowingly fails to disclose a change in circumstances in order to obtain or continue to receive under a program aid or benefits to which he is not entitled or in an amount larger than that to which he is entitled, or who knowingly aids and abets another person in the commission of any such act

shall be punished as provided in section 143 of this title.

33 V.S.A. § 143, referred to in the above section, provides in pertinent part:

...

(b) If the person convicted is receiving assistance,

benefits or payments, the commissioner may recoup the amount of assistance or benefits wrongfully obtained by reducing the benefits or payments periodically paid to the recipient, as limited by federal law, until the amount is fully recovered.

In Fair Hearing No. 11,263 the board held that a court ruling regarding "restitution" constitutes a criminal penalty that does not affect or alter the Department's right and authority under 33 V.S.A. § 141 (a) and the food stamp regulations (F.S.M. § 273.18[g][3]) to invoke the additional civil remedy of recoupment from the recipient's ongoing benefits of the amount the recipient has been found by the

Court to have "wrongfully obtained". See also Fair Hearing No. 10,442.

The provision in the Department's Procedures Manual cited by the petitioner (§ P-2540[B][4][c][3][c]) that the Department will "compromise" claims "if the court indicates that the fraud overpayment does not have to be fully repaid" refers to situations in which either the Department of Social Welfare or the Department of Probation and Parole has been assigned by the court for "collection". In light of the

statutes and regulations (see supra) regarding "recoupment", it seems incongruous to apply this section to situations in which the recipient remains eligible (or later becomes eligible) for ongoing benefits. Even if it did apply to the petitioner's situation, however, the Court's determination in this matter was only that the petitioner was discharged from probation and no longer had to pay "restitution"--not that any "overpayment" she owed to the Department did not have to be "repaid".

In light of the above provisions it must be concluded that regardless of the petitioner's discharge from probation, and release from restitution, the Department has the authority to seek recoupment against the petitioner for the full amount (\$4,091.00) of food stamps that she was found to have "wrongfully obtained".⁽³⁾ Therefore, the Department's decision in this regard is affirmed.

The petitioner's remaining claim in this matter is that the federal and state regulations that required the Department to delay the implementation of the six-month disqualification penalty against the petitioner for her intentional program violation until she reapplied for food stamps (which was more than five years after her conviction) violates the federal statute that specifies that disqualification penalties are to be assessed "immediately upon the rendering" of a determination of intentional program violation. The board agrees with this assessment of the law.

The statute in question, 7 U.S.C. § 2015(b), provides, in pertinent part:

Fraud and misrepresentation; disqualification penalties; ineligibility period; application procedures. (1) Any person who has been found by any State or Federal court or administrative agency to have intentionally (A) made a false or misleading statement, or misrepresented, concealed or withheld facts, or (B) committed any act that constitutes a violation of this act [7 USCS § 2011 et seq.], the regulations issued thereunder, or any State statute, for the purpose of using, presenting, transferring, acquiring, receiving, or possessing coupons or authorization cards, shall, immediately upon the rendering of such determination, become ineligible for further participation in the program--

(i) for a period of six months upon the first occasion of any such determination . . .

Emphasis added.

The federal and state regulations (7 C.F.R. and F.S.M. § 273.16[g][2][ii]), however, add the following provision, which is not found anywhere in the federal statutes:

If the individual is not eligible for the Program at the time the disqualification period is to begin, the period shall be postponed until the individual applies for and is determined eligible for benefits.

Although there is no question that the Department's decision in this matter was in accord with the above federal and state regulations, there is little room for argument that these regulations are consistent with the above federal statute. The case of Anderson v. North Carolina Dept. of

Human Resources, 428 SE2d 267 (N.C. App. 1993) contains the following analysis and ruling on this question:

The specific issue in the case at bar is clearly resolved by the statute. The language of the statute requires a penalty of a specified period of time, to commence immediately upon a determination that a food stamp recipient has violated the provisions of the Food Stamp Act. Furthermore, the statute provides that the period of ineligibility "shall remain in effect, without possibility of administrative stay, unless and until the finding upon which the ineligibility is based is subsequently reversed by a court. . . ." 7 U.S.C.A. § 2015(b)(3) (1991). Thus, it is clear that the subject regulation does not "give effect to the unambiguously expressed intent of Congress" because it mandates what the statute clearly prohibits: postponement of the disqualification period.

The State contends that if effect is not given the regulations, the Congress' intent to punish violators may not be realized where a violator would not be income eligible at the time his penalty is imposed. The language of the statute, however, specifically does not allow for the postponement of the ineligibly period under any circumstances. If Congress had intended such a postponement, it could have enacted a provision which would require a determination of income eligibility upon the finding of a violation. As such, if the violator was not income eligible at that time, Congress likewise could have provided for a postponement of the penalty until the violator was again income eligible. To date, Congress has not chosen to enact such a provision, and, in view of the current statutory language, neither the courts nor any federal agencies have the power to so legislate.

The Department has not submitted any argument or legal authority challenging the holding of the Anderson decision; and the board is unaware of any other decision that directly addresses the issue. It finds the Anderson ruling highly persuasive, however. The federal and state regulations that require the "postponement" of the disqualification penalty clearly and directly contradict the federal statute that the period of ineligibility is to be effective "immediately". As the Anderson case holds, this renders those regulations invalid.

In this case the petitioner, in a court decision dated July 14, 1987, was found to have committed an intentional program violation. Following this decision she did not apply for food stamps again until October, 1992--more than five years later. Nonetheless, the Department, following its regulations (supra), imposed a six-month disqualification penalty against the petitioner commencing with the date of her application. The petitioner now seeks to have restored the additional amount of food stamps her household would have received during this period (\$528.00, less the 20% recoupment it was subject to--see supra) had she not been disqualified. Based on the Anderson decision, the board concludes that the Department's decision denying the petitioner the restoration of these benefits must be reversed.

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1. Consideration of this matter by the hearing officer was delayed several months due to the delay by the parties in responding to requests by the hearing officer for further documentation of certain factual allegations.
2. The petitioner does not dispute that she was ineligible for food stamps for the six months that immediately followed her conviction. See F.S.M. § 273.17(e).
3. Of course, the Department could not administratively recoup any amount already repaid to it by the recipient in the form of restitution. In other words, the total amount of benefits recouped by the Department through a combination of restitution and reductions in the recipient's ongoing benefits cannot exceed the amount the recipient was determined to have "wrongfully obtained".